UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Bernard Fischler, Plaintiff, vs. Rappaport, Hertz, Cherson & Rosenthal, P.C., Defendant(s).	**COMPLAINT**

Plaintiff BERNARD FISCHLER, by and through his attorneys, Law Office of Stuart D. Werbin, complaining of the Defendant, hereby alleges as follows:

1. This is an action for damages brought by an individual consumer for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (hereafter the "FDCPA"). The FDCPA prohibits debt collectors from engaging in abusive, deceptive, and unfair collection practices.

JURISDICTION AND VENUE

2. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343. Venue is properly in this Court under 28 U.S.C. §§ 1391(b)(1), (b)(2) and (b)(3), because the Defendant resides in this judicial district, a substantial part of the events giving rise to the claim occurred in this judicial district, and Defendant is subject to this Court's personal jurisdiction with respect to this action.

PARTIES

3. Plaintiff, Bernard Fischler, is an adult residing in New York, NY.

4. Defendant Rappaport, Hertz, Cherson & Rosenthal, P.C. is a law firm regularly engaged in the business of collecting debts in this State with its principal place of business located at 118-35 Queens Blvd., 9th Floor, Forest Hills, NY 11375. The principal purpose of Defendant is the collection of debts using the mails and telephone, and Defendant regularly attempts to collect debts alleged to be due another.
5. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6) of the FDCPA.
6. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3) of the FDCPA.

FACTUAL ALLEGATIONS

7. Defendant Rappaport, Hertz, Cherson & Rosenthal, P.C. attempted to collect a debt allegedly owed by Plaintiff relating to household rent allegedly owed to G & L Realty Delaware, LLC.
8. The debt at issue arises out of an alleged transaction which was primarily for personal, family or household purposes and falls within the definition of “debt” for purposes of 15 U.S.C. § 1692a(5).
9. Defendant sent Plaintiff an initial dunning letter on or about February 20, 2015. This letter was mistakenly dated “Febuary [sic] 20, 2014”.
10. This letter stated the following, in relevant part: “Unless you, within thirty days after receipt of this notice, dispute the validity of the debt, or any portion thereof, the debt will be assumed to be valid.”
11. The FDCPA requires that a validation notice specifically include “a statement that unless the consumer, within thirty days after receipt of the notice, disputes

the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector."

12. Defendant's failure to include the term "by the debt collector" is deceptive and misleading to the least sophisticated consumer, in violation of the FDCPA.

13. Defendant knew or should have known that its actions violated the FDCPA. Additionally, Defendant could have taken the steps necessary to bring its actions within compliance with the FDCPA, but neglected to do so and failed to adequately review its actions to ensure compliance with said laws.

14. At all times pertinent hereto, Defendant was acting by and through its agents, servants and/or employees, who were acting within the scope and course of their employment, and under the direct supervision and control of the Defendant herein.

15. At all times pertinent hereto, the conduct of Defendant, as well as that of its agents, servants and/or employees, was malicious, intentional, willful, reckless, negligent and in wanton disregard for federal and state law and the rights of the Plaintiff herein.

16. As a result of Defendant's conduct, Plaintiff has sustained actual damages including, but not limited to, emotional and mental pain and anguish.

CLAIMS FOR RELIEF

(Fair Debt Collection Practices Act)

17. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 16 herein.

18. The above contacts between Defendant and Plaintiff were "communications" relating to a "debt" as defined by 15 U.S.C. § 1692a(2) and 1692a(5) of the FDCPA.

19. Defendant violated provisions of the FDCPA, including, but not limited to, the following:

20. FDCPA 15 U.S.C. § 1692g(a)(3) requires that a validation notice specifically include “a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector."

21. Defendant’s initial dunning letter to Plaintiff failed to include language indicating that the debt would be assumed valid by the debt collector, in violation of § 1692g(a)(3).

22. As a result of the above violations of the FDCPA, Defendant is liable to Plaintiff for actual damages, statutory damages which can be up to $1,000.00, attorney’s fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that judgment in the sum of $10,000.00 be entered against Defendant as follows:

(a) That judgment be entered against Defendant for actual damages pursuant to 15 U.S.C. § 1692k(a)(1);

(b) That judgment be entered against Defendant for statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A);

(c) That the Court award costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3); and

(d) That the Court grant such other and further relief as may be just and proper.

Dated: May 4, 2015
Brooklyn, New York

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